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February 20, 2007

VIA ELECTRONIC MAIL ONLY

Chair Michael McGowan and Commissioners
Delta Protection Commission
14215 River Road
P.O. Box 530
Walnut Grove, CA 95690

Re: Old Sugar Mill Specific Plan Appeals--County Comments on Proposed Findings

Dear Chair McGowan and Commissioners:

The County submits this letter to address the proposed findings prepared by Commission staff in connection with the above-referenced appeals. The findings are inconsistent with the direction provided by the Commission on January 25, 2007 in several respects.

In the proposed findings relating to Land Use Policy 3 (agricultural buffers), no evidence supports the conclusion—which appears in several places—that future agricultural use of a portion of the vineyard property will be *impossible* unless a wider buffer is imposed on the Project site. (Proposed Findings at pp. 5-6.) As the Commission recognized, a buffer of less than 500 feet may preclude aerial applications of regulated substances, but that is all. Indeed, a significant portion (about 25 percent) of the vineyard property is already subject to aerial spraying restrictions due to the proximity of the long-established winery on the Project site and residential and commercial areas of Clarksburg to the north and south. That it continues to be farmed is an indication of the relatively minor impairment posed by these occupied areas. In short, the Commission clearly understood that the vineyard property will remain suitable for agricultural production after the Project is constructed. The proposed findings should be revised to reflect this important understanding, consistent with the discussion on January 25, 2007.

The proposed findings should also be revised to reflect that virtually all of the “75-foot area” between the vineyard and the Project site is, in fact, a County-owned right of way that includes Willow Avenue. County staff researched this issue following the January 25, 2007 meeting and found that the right-of-way is 50 feet wide, and that the vineyard is planted to the edge of the right-of-way. No expansion of the vineyard to the east is legally possible. This important fact should be reflected in the findings, as it may have a bearing on the application of any larger buffer area required by the Commission.¹

¹ The County assumes that the Project is required to include buffers or other means of reducing potential spray drift (i.e., berms, vegetation screens, etc.) only to the extent that those measures preserve an existing right to apply regulated substances by airplane on portions of the vineyard property. In other words, no buffers or other measures are required to

Lastly, County representatives at the January 25, 2007 meeting observed some confusion during the vote on Land Use Policy 3. Specifically, staff believe that some commissioners may have cast a “yes” vote on the motion believing that—based on the original motion—they were voting to find the project *consistent* with Land Use Policy 3. The County thus encourages the Commission to revisit this vote to ensure that the outcome reflects the true intentions of the Commission, rather than a mistake based on a misunderstanding of the pending motion. In making this request, the County is not requesting that the Commission reconsider its preliminary determination that the Project is consistent with Land Use Policy 3.²

Turning to Land Use Policy 4 (support infrastructure and flood protection), the proposed findings include text on several points that were not discussed by the Commission on January 25, 2007. This material, which is as follows, should be deleted from the findings relating to Land Use Policy 4:

- ***Support Infrastructure.*** The findings state that the Commission found that the Project site lacks the level of support infrastructure reasonably necessary to accommodate the residential component of the Project. (Proposed Findings at p. 6.) The tape recordings of the Commission proceedings indicate that, in the context of Policy 4, the Commission neither discussed this issue nor reached this conclusion.
- ***Housing Needs.*** The findings state that the Commission found that the residential component of the Project includes more units than necessary. (Proposed Findings at p. 7.) The Commission did not discuss this issue in any detail on January 25, 2007. Such a finding is not only unsupported by what happened at that meeting, it is also unsupported by any evidence. The County’s January 10, 2007 letter provided substantial evidence that the 162 housing units approved by the Board of Supervisors are needed. (January 10, 2007 letter at p. 18.) This evidence is ignored in the proposed findings, which instead focus on the 2001 Clarksburg General Plan without recognizing that its estimate of housing needs was *in addition to* the number of units to be built on the Project site.
- ***“Life of the Project” Theory.*** In the staff report for the January 25, 2007 meeting, Commission staff suggested that the County must demonstrate compliance with flood protection infrastructure needs “over the life of the Project.” (Proposed Findings at p. 6.) This requirement (whatever it may be) does not appear in Land Use Policy 4. More importantly, it was not discussed by the Commission or integral to its decision on Policy 4.
- ***“Known Uncertainties.”*** In the “life of the project” discussion, the findings also state that “known uncertainties” relating to the adequacy of flood protection are somehow relevant to consistency Land Use Policy 4. (Proposed Findings at pp. 6-7.) This is a further reason why the discussion on the “life of the project” theory should be deleted. The “known uncertainties” offered in the proposed findings have nothing to do with the adequacy of flood protection. Instead, the “known uncertainties” consist only of a list of pending flood

the extent they add nothing to the ability to apply regulated substances to the vineyard property, whether now or in the future.

² Commission staff have expressly refused, despite the County’s objections, to accept and transmit any such requests from the County or other parties to the Commission.

legislation and the levee review activities of federal and state agencies. Needless to say, the actions of the Legislature and various agencies do not create uncertainty about the degree of flood protection currently provided by the levees protecting Clarksburg.

Similarly, the proposed findings relating to Levees Policy 3 (increased flood protection; resulting density increases) also contain text relating to issues that were not discussed by the Commission. Two such issues are as follows:

- ***Increased Flood Protection.*** The proposed findings imply that the Commission found the Project “may require increased flood protection.” (Proposed Findings at pp. 9-10.) The meaning of this statement is unclear, but it implies that the Project is itself a flood protection project rather than a project that includes, as mitigation and voluntary applicant commitments, ancillary flood protection studies and possible levee enhancements. If that is intended, then this statement and all related discussion in the proposed findings is inconsistent with Commission discussion of the topic. The relevant issue is not whether a project includes mitigation and (as here) voluntary private commitments to address flood protection concerns. These measures should be encouraged. Instead, the relevant issue under Policy 3 is whether the existence of flood protection that exceeds levels existing on January 1, 1992 is offered as a basis for an otherwise inappropriate increase in urban density—presumably (for reasons set forth in the discussion on “densities,” below) in areas that were largely undeveloped as of January 1, 1992. The Commission did not decide this issue, and the final paragraph on page 9 of the proposed findings should therefore be deleted.
- ***Densities.*** The proposed findings offer an interpretation of the term “densities” that the Commission did not endorse and, importantly, is simply wrong. (Proposed Findings at p. 9.) As the County has previously pointed out, the Resource Management Plan uses the term “densities” to refer broadly to all urban development. (See January 10, 2007 letter at p. 23.) This is consistent with the Delta Protection Act’s goal of preventing significant urbanization (of any type) of undeveloped areas of the Primary Zone. The term “densities” in Levees Policy 3 should be interpreted consistent with this goal and with the use of the term elsewhere in the Resource Management Plan. It should not be interpreted in the manner proposed by Commission staff, nor should it be interpreted by reference to the Clarksburg General Plan. This text should be substantially revised or deleted.

Separately, the Commission did not decide that the residential component of the Project is “high density” or “moderately high density.” (Proposed Findings at pp. 8-9.) This discussion should be deleted.³

In addition to these issues, the proposed findings for both Land Use Policy 4 and Levees Policy 3 each contain a lengthy flood risk discussion that is not consistent with the Commission’s deliberations on January 25, 2007, or with evidence in the record. For example, at no point did the Commission find that the Project site is located in “an area prone to floods.” (Proposed Findings at p. 9.) Yet this basic assumption appears repeatedly

³ Under the Land Use Element of the County General Plan (Land Use Policy 24), the residential component falls in between the low density (up to 6 units/net acre) and medium density (10-19 units/net acre) designations, as the Project approvals allow for an average of 8.6 units per net acre.

in the proposed findings. There is no substantial evidence to support this conclusion. Rather, as the County has acknowledged repeatedly, a geotechnical investigation is needed to confirm whether the Sacramento River levee provides 100-year or greater flood protection. (This investigation will occur if the Project goes forward.) The Commission understood this, and it did not presuppose the outcome of this investigation is during its deliberations on January 25, 2007. This text should therefore be deleted.

The proposed findings for Land Use Policy 4 and Levees Policy 3 also repeatedly suggest that the Project will “reduce the level of public health and safety” in Clarksburg. (Proposed Findings at pp. 6 and 9.) The Commission did not reach this conclusion. If anything, the Commission recognized that existing levels of flood protection will not decrease as a result of the Project. Rather, as the County demonstrated, the Project could *increase* the level of flood protection by generating additional information about the Sacramento River levee, a plan to fix any deficiencies, and by requiring feasible improvements to be implemented before any residential construction. If anything, these and other measures will enhance the level of public health and safety for both current and future residents. Accordingly, text in the proposed findings that indicates the Project will “reduce the level of public health and safety” should be deleted.


As a final matter, the proposed findings repeatedly state that the Project is inconsistent with unspecified provisions of the Delta Protection Act. (Proposed Findings at pp. 1, 2, and 4.) The County acknowledges that at the end of the January 25, 2007 meeting, the Commission’s attorney proposed a motion that referred to inconsistencies with Land Use Policies 3 and 4, Levees Policy 3, and “related provisions of the Delta Protection Act.” This motion, however, never should have been proposed. The Commission did not discuss any specific provisions of the Delta Protection Act during the January 25, 2007 meeting, either before or during this motion. Even the findings do not identify the specific provisions of the Delta Protection Act that are supposedly at issue. This finding should be deleted, as it is entirely without support.

Altogether, the shortcomings discussed in this letter are significant and should be addressed by the Commission before the proposed findings are adopted. The findings are very important. The County will rely heavily on the findings on remand, and it must be able understand the Commission’s interpretation of each of the policies at issue and the specific areas where the Project failed to adhere to those policies. The proposed findings, however, cover issues that the Commission did not discuss and they do not offer sound guidance to the County or other local governments responsible for administering the Resource Management Plan.

The County respectfully requests that the Commission take the steps needed to address these concerns prior to the adoption of the findings, and it sincerely appreciates the Commission’s consideration of these issues.

Very truly yours,

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